

Message Text

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ACTION COME-00

INFO OCT-01 EUR-25 ISO-00 L-03 TRSE-00 OMB-01 EB-11

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FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC 6419

UNCLAS BUCHAREST 3357

FOR COMMERCE

E.O. 11652: N/A

TAGS: BDIS, RO

SUBJ: TRADE COMPLAINT: ERIE FOUNDRY

REF: BUCHAREST 0990

1. SUBSEQUENT TO CONVERSATIONS REPORTED REFTEL, CONTRACT FOR SALE OF 7 MECHANICAL FORGING PRESSES WAS APPARENTLY SIGNED BY MASINEXPORT AND ERIE FOUNDRY. ON SEPTEMBER 11, HOWEVER, MASINEXPORT REPS CALLED EMBOFFS TO THEIR OFFICES TO COMPLAIN THAT ERIE WAS ATTEMPTING TO INTRODUCE SUBSTANTIAL MODIFICATIONS IN TERMS AFTER CONTRACT SIGNED. MASINEXPORT GAVE US FOLLOWING ACCOUNT OF EVENTS.

2. ON 13 APRIL 1973, CONTRACT FOR SALE OF 7 PRESSES AT A TOTAL COST OF \$2,400,000 WAS SIGNED BY REPS OF MASINEXPORT AND R.E. MYTINGER, GENERAL SALES MANAGER OF ERIE. ERIE MANAGEMENT DID NOT ACCEPT CONTRACT AND AT ERIE'S REQUEST A SUPPLEMENTAL CONTRACT WAS SIGNED ON 22 MAY, ALTHOUGH ORIGINAL CONTRACT APPEARS BINDING ON BOTH PARTIES. ERIE THEN PROPOSED ON 1 JULY THAT THE ORIGINAL CONTRACT AND SUPPLEMENT BE INCORPORATED INTO A SINGLE DOCUMENT. WHEN THE NEW CONTRACT ARRIVED FROM ERIE, SAID THE MASINEXPORT REPS, IT CONTAINED MANY NEW CONDITIONS AND CLAUSES NOT PRESENT IN ORIGINAL OR SUPPLEMENT. A SERIES OF EXCHANGES BY TELEX FOLLOWED, WITH MASINEXPORT ACCEPTING SOME CHANGES AND REJECTING OTHERS. THE MOST RECENT MESSAGE FROM ERIE, WHICH REQUESTS

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SEPTEMBER 14 REPLY, INDICATES A FIVE PERCENT PRICE INCREASE TO \$2,500,000 AND SUGGESTS THAT THE INTEREST CHARGE MAY ALSO BE

INCREASED UNLESS MASINEXPORT PROMPTLY ACCEPTS THE NEW TERMS.

3. MASINEXPORT REPS TOLD US THAT WHILE THEY HAVE ALREADY ACCEPTED SOME MODIFICATION OF THE ORIGINAL TERMS, THEIR POSITION IS THAT THEY HAVE A VALID AND BINDING CONTRACT AND THAT PRICE AND INTEREST CHANGES, AS WELL AS SOME OTHER MODIFICATIONS PROPOSED BY ERIE, ARE OUT OF THE QUESTION AND CANNOT BE ACCEPTED. THEY ARE WILLING TO SETTLE THE MATTER THROUGH DIRECT TALKS IN BUCHAREST WITH AN ERIE REP OF SUFFICIENT AUTHORITY, OTHER THAN MR. MYTINGER, RATHER THAN RESORTING TO THE ARBITRATION PROVISION INCLUDED IN THE ORIGINAL CONTRACT.

4. EMBASSY COMMENT: BASED ON FIRST INSPECTION OF CONTRACT TERMS AND SUBSEQUENT COMMUNICATIONS BETWEEN ERIE AND MASINEXPORT, IT APPEARS THAT A STRONG CASE CAN BE MADE FOR THE POSITION TAKEN BY THE MASINEXPORT REPS. THE SIZE OF THE TRANSACTION AND THE FACT THAT IT INVOLVES AN IMPORTANT SECTOR OF ROMANIAN INDUSTRY WARRANTS AN ATTEMPT TO BRING THE TWO PARTIES TO AGREEMENT.

5. ACTION REQUESTED. REQUEST THAT COMMERCE DEPARTMENT CONTACT ERIE FOUNDRY TO EXPLORE POSSIBLE MEANS OF AMICABLE SETTLEMENT.
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